

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Califormula Broadcasting)	
1690 Frontage Road)	NAL/Acct No. 200132940001
Chula Vista, California 91911)	Case No. EB-00-SD-248

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 13, 2000

Released: October 13, 2000

By the Enforcement Bureau: San Diego District Office

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Califormula Broadcasting (Califormula) has apparently violated Section 301 of the Communications Act of 1934 ("Act"), as amended¹, by operating an unlicensed Private Microwave radio station without Commission authorization. We conclude that Califormula is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On February 17, 2000, the FCC's San Diego District Office received a complaint alleging that a Mexican FM Broadcast radio station, known as XLNC1 Tijuana, was causing interference to the reception of FCC licensed FM Broadcast Radio station KPFK Los Angeles.
3. On February 22, 2000, from examining the Califormula's internet WebPages, Califormula operated two Mexican FM Broadcast stations; XLNC1 and XHITZ-FM, both located in Tijuana, BN. Also, the studios and business offices for these radio stations were located at 1690 Frontage Road, Chula Vista, California.
4. On July 25, 2000, an agent from the FCC's San Diego District Office contacted Califormula staff by telephone and asked where the studio of XLNC1 was located. This telephone conversation confirmed that the studio for XLNC1 and XHITZ-FM was located at 1690 Frontage Road, Chula Vista, California.
5. On July 26, 2000, two agents from the FCC's San Diego District Office inspected the studio facilities of at 1690 Frontage Road, Chula Vista, California. Also, an interview was

¹ 47 U.S.C. § 301.

conducted with Mr. Victor Diaz, owner and manager of the Califormula. Mr. Diaz indicated that the program material for XHITZ-FM was being transmitted across the border by a Private Microwave radio station on frequency 23225 MHz. An inspection of the microwave transmitter was conducted.

6. Mr. Diaz provided the FCC agents a copy of a FCC authorization for a Private Microwave radio station using frequency 23225 MHz. However, the location for that transmitter was 1229 Third St., Chula Vista, California and granted under the name Noventa FM 90, Inc. No FCC authorization to operate any Private Microwave radio station from the 1690 Frontage Road, Chula Vista, California site for Califormula could be found. A subsequent search of FCC records revealed no authorization had been issued.

III. DISCUSSION

7. On July 25, 2000, Califormula was operating an unauthorized Private Microwave radio station on 23225 MHz at the studio location of XHITZ-FM at 1690 Frontage Road, Chula Vista, California.
8. Califormula was in violation of Section 301 of the Communications Act of 1934, as amended², which in part states that, “*No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio...*” “*..except under and in accordance with the Act and with a license in that behalf granted under the provisions of this Act.*” Despite verbal warnings given to Mr. Victor Diaz on July 26, 2000, Califormula continues to operate the Private Microwave radio station at 1690 Frontage Road, Chula Vista, California.
9. Based on the evidence before us, we find that since July 25, 2000, Califormula has willfully³ and repeatedly violated Section 301 of the Act, as amended⁴, by operating radio transmission apparatus without a Commission authorization.
10. Pursuant to Section 1.80 of the Rules, Guidelines for Assessing Forfeiture, the base forfeiture amount for operating a radio station without an authorization is ten thousand dollars (\$10,000)⁵. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Applying the Policy Statement and statutory factors to the instant case, we believe that a monetary forfeiture of ten thousand dollars (\$10,000) is warranted for the violation.

² 47 U.S.C. § 301.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 U.S.C. § 301.

⁵ 47 C.F.R. § 1.80

⁶ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁸ Califormula Broadcasting is hereby **NOTIFIED** of their **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violating Section 301 of the Act⁹.

12. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this **NOTICE OF APPARENT LIABILITY**, Califormula Broadcasting **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200132940001

14. The response if any must be mailed to Federal Communications Commission, 4542 Ruffner St., Suite 370, San Diego, CA 92111-2216 and must include the NAL/Acct. No. 200132940001.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

17. **IT IS FURTHER ORDERED THAT** this Notice shall be sent, by certified mail, return receipt requested, to Califormula Broadcasting, 1690 Frontage Road, Chula Vista, California 91911.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director
San Diego District Office

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ 47 U.S.C. § 301

¹⁰ See 47 C.F.R. § 1.1914.